

**STATE OF RHODE ISLAND
 PROVIDENCE, SC**

SUPERIOR COURT

**CONCERNED CITIZENS OF CAPITAL
 CENTER, LLC; 100 WESTMINSTER
 PARTNERS, LLC; 30 KENNEDY
 PARTNERS, LLC; and EXCHANGE
 STREET HOTEL, LLC**
Plaintiffs

C.A. No.: _____

vs.

**THE CITY OF PROVIDENCE;
 LAWRENCE MANCINI, in his capacity as
 Director of Finance for the City of Providence;
 BONNIE NICKERSON, in her capacity as
 Planning Director for the City of Providence;
 RHODE ISLAND DEPARTMENT OF
 TRANSPORTATION; PETER ALVITI,
 JR., P.E., in his capacity as Director of the
 Rhode Island Department of Transportation;
 RHODE ISLAND PUBLIC TRANSIT
 AUTHORITY; and SCOTT AVEDISIAN,
 in his capacity as Chief Executive Officer for
 the Rhode Island Public Transit Authority**
Defendants

COMPLAINT

Introduction

NOW COME, the Plaintiffs, Concerned Citizens of Capital Center, LLC, 100 Westminster Partners, LLC, 30 Kennedy Partners, LLC and Exchange Street Hotel, LLC (hereinafter, the “Plaintiffs”) and hereby assert this instant action against the Defendants, City of Providence, Lawrence Mancini, in his capacity as Director of Finance for the City of Providence and Bonnie Nickerson, in her capacity as Planning Director for the City of Providence (hereinafter, the “City”), the Rhode Island Department of Transportation and Peter J. Alviti, in his capacity as the Director of Transportation for the State of Rhode

Island (hereinafter, the “RIDOT”), and the Rhode Island Public Transit Authority and Scott Avedisian, in his capacity as Chief Executive Officer for the RIDOT (hereinafter, “RIPTA” and along with the “City” and “RIDOT”, collectively, the “Defendants”) for damages and equitable relief as a result of the City’s Kennedy Plaza Improvement Project, the proposed Downtown Transit Connector Project and the proposed Providence Intermodal Transit Center. Specifically, the Plaintiffs assert that the City’s Kennedy Plaza Improvement Project, which will completely re-route the bus, vehicular and pedestrian traffic at Kennedy Plaza stands to significantly impact the Plaintiffs’ properties and property interests, which properties are located adjacent to and in close proximity to the project, resulting in property devaluation, inconvenience, annoyance and an interference with the Plaintiffs’ quiet enjoyment of their properties.

The Plaintiffs assert that the City, RIDOT and RIPTA have violated Federal Regulations, State law and the City’s local zoning regulations with regard to the permitting for the project, resulting in a violation of the Plaintiffs’ due process rights. The Plaintiffs further assert that the City’s, RIDOT’s and RIPTA’s actions and inactions with regard to the Kennedy Plaza Improvement Project, Downtown Connector Project and the Providence Intermodal Transit Center will amount to negligence, tortious interference and maintenance of a private and public nuisance in violation of Rhode Island law, statutory law and common law, as set forth herein.

Parties

1. Plaintiff, Concerned Citizens of Capital Center, LLC (“CCCC”), is a non-profit Rhode Island limited liability company with an address of 100 Exchange Street, Providence, RI 02903.

2. Plaintiff, 100 Westminster Partners, LLC (“100 Westminster Partners”), is a Rhode Island limited liability company and the owner of the property located at 100 Westminster Street, Providence, Rhode Island.

3. Plaintiff, 30 Kennedy Partners, LLC (“30 Kennedy Partners”), is a Rhode Island limited liability company and the owner of the property located at 59 Westminster Street, Providence, Rhode Island.

4. Plaintiff, Exchange Street Hotel, LLC (“Exchange Street Hotel”), is a Rhode Island limited liability company and the owner of the property located at 5 Exchange Street, Providence, Rhode Island.

5. Defendant, City of Providence, is a Rhode Island municipal corporation.

6. Defendant, Lawrence Mancini, is being sued in his capacity as the Finance Director for the City of Providence.

7. Defendant, Bonnie Nickerson, is being sued in her capacity as Planning Director for the City of Providence.

8. Defendant, Rhode Island Department of Transportation, is a Rhode Island State government agency charged with design, construction, maintenance and inspection of a wide range of transportation infrastructure.

9. Defendant, Peter Alviti, Jr., P.E., is being sued in his capacity as the Director of RIDOT.

10. Defendant, Rhode Island Public Transit Authority, provides public transportation, primarily busses, in the State of Rhode Island.

11. Defendant, Scott Avedisian, is being sued in his capacity as the Chief Executive Officer of RIPTA.

12. RIDOT and RIPTA are necessary indispensable parties to the case in controversy as asserted within this Complaint, pursuant to the invocation of the Rhode Island Declaratory Judgment action, R.I. Gen. Laws § 9-30-11 (“when declaratory relief is sought, all persons shall be made parties, who have or claim any interest, which would be effected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding”). A Court may not assume subject matter jurisdiction over declaratory judgment action when a Plaintiff fails to join all necessary and indispensable parties, who have an actual and essential interest that would be affected by the Declaration. *See Sullivan v. Chaffee*, 703 A.2d, 748, 754 (R.I. 1997).

Jurisdiction

13. This Court has jurisdiction to adjudicate the within claims pursuant to R.I. Gen. Laws § 8-2-13, § 8-2-14, and § 9-30-1, *et seq.* Moreover, this Superior Court has subject matter jurisdiction over the instant matter pursuant to Rule 65 of the Rhode Island Superior Court Rules of Civil Procedure, Injunctions.

General Allegations

14. Plaintiff, CCCC, is a non-profit organization comprised of citizens with property interests located at 100 Exchange Street, Providence, Rhode Island.

15. Plaintiff, 100 Westminster Partners, is the owner of the property located at 100 Westminster Street a/k/a 50 Kennedy Plaza, Providence, Rhode Island (the “100 Westminster Street Property”).

16. Plaintiff, 30 Kennedy Partners, is the owner of the property located at 59 Westminster Street, Providence, Rhode Island (the “59 Westminster Street Property”).

17. Plaintiff, Exchange Street Hotel is the owner of the property located at 5 Exchange Street, Providence, Rhode Island (the “5 Exchange Street Property”).

18. The 100 Westminster Street Property, 59 Westminster Street Property, 5 Exchange Street Property and properties whereby CCCC have an interest in shall collectively be referred to herein as the “Properties”.

19. The City seeks to redevelop Kennedy Plaza in downtown Providence. This development project is known as the Kennedy Plaza Improvement Project (the “Improvement Project”).

20. The purpose of the redevelopment of Kennedy Plaza is to also include the development and implementation of RIDOT’s and RIPTA’s Providence Intermodal Transit Center (“PITC”) and the Downtown Transit Connector (“DTC”). The Improvement Project, the PITC and DTC shall collectively be referred to herein as (the “Kennedy Plaza Project”).

21. The Improvement Project consists of a re-routing of all bus routes and vehicular and pedestrian traffic and also changing the location of the bus stops at Kennedy Plaza.

22. The Improvement Project will alter the traffic flow on Washington Street in that it will no longer have vehicular traffic but will be converted to two-way traffic for buses only.

23. The Improvement Project includes continuous bus lanes in both directions between Kennedy Plaza and the Eastside Bus Tunnel near the intersection of Waterman and North Main Streets.

24. The Improvement Project includes a new, raised and illuminated mid-block crossing across Fulton and Washington Streets in front of 111 Westminster Street.

25. The Improvement Project includes Fulton Street being converted to two-way traffic for all vehicles with a redesigned intersection of Fulton Street and Memorial Blvd.

26. The Improvement Project includes closure of East approach to all vehicle and bus traffic in order provide a single connected park between Burnside Park and Biltmore Park.

27. The Improvement Project includes all bus stops on Exchange Terrace being removed and consolidated onto Washington Street.

28. The Improvement Project plans provide that all bus activity will be removed from East Approach and consolidated onto Washington Street.

29. The Improvement Project provides that two (2) of the four (4) existing bus stops on Fulton Street will be consolidated onto Washington Street.

30. The Memorial/Fulton Street intersection will also undergo reconstruction, to include a medium break and a new traffic light at Memorial and Fulton Street, which will allow left turns from Memorial to Fulton and from Fulton to Memorial.

31. The Improvement Project will also include East Approach being closed to all traffic.

32. The Improvement Project also provides for a "Public Space", to include a farmer's market, corridor surface paintings, overhead structure, swing feature, pop up art installation and a temporary structure.

33. The City has indicated that the design engineering for the Improvement Project is supposed to be completed in November of 2018, with construction out to bid in the winter of 2018/2019. In the Spring of 2019, a construction contract is supposed to be awarded and construction begins.

34. Upon information and belief, the Improvement Project is being proposed in conjunction with RIDOT's and RIPTA's proposal for the implementation of the PITC.

35. In November of 2014, the Rhode Island voters approved a \$35,000,000 Transit Bond to enable RIDOT to create a transit hub (the "Transit Bond"). The location of the transit hub had not, in 2014, been determined. As part of the Kennedy Plaza Project, it is the goal of the RIDOT, the City and RIPTA to implement the PITC at or near Kennedy Plaza.

36. The City, RIDOT and RIPTA have not produced any reports or other information detailing how they will handle any environmental issues and drainage issues as a result of the Kennedy Plaza Project.

37. Upon information and belief, the Kennedy Plaza Project stands to create environmental problems and issues in the City.

38. The City, RIDOT and RIPTA intend to utilize the Kennedy Plaza Project as a means to use the State House front lawn as the location for the construction of the PITC.

39. The location of the PITC at the State House front lawn would have a detrimental effect on the State, City and nearby property owners.

40. The Plaintiffs do not want to disturb the State House lawn and for the same to be utilized as the location of the PITC.

41. The implementation of the Kennedy Plaza Project is intended to function in direct coordination with the PITC. Accordingly, the City, RIDOT and RIPTA intend to utilize the Transit Bond approval granted in 2014 for the PITC as a means for funding improvements that will directly impact the Kennedy Plaza Project.

42. Upon information and belief, the DTC is to provide a transit service through Downtown Providence, which would begin at the Providence Train Station and end at that certain area known as the Hospital District. The DTC is part of a shared RIPTA and City goal for the creation of a transit service system in Downtown Providence, the same which would be funded in part through a \$13,000,000 Federal grant, and unknown whether the same has been identified or provided, to date.

43. Upon information and belief in conjunction with the Improvement Project and PITC, the City, RIDOT and RIPTA seek to incorporate the DTC as part of the Kennedy Plaza Project and the construction and implementation of the PITC.

44. Upon information and belief, RIPTA would operate the DTC and other bus routes through Kennedy Plaza; therefore, creating the need for the Improvement Project, as currently proposed by the City.

45. Upon information and belief, it is the City's, RIDOT's and RIPTA's goal to permit all RIPTA service to eventually run on Washington Street as a two-way bus only transit system. This transformation is to be completed in conjunction with the PITC, which the City, RIDOT and RIPTA seek to build at or near Kennedy Plaza.

46. Upon information and belief, the Kennedy Plaza Project has contributed funding to support the City's electric-bike share system, which was recently launched. Accordingly, the shared docking stations have been located throughout the City and they

have been strategically located along the future DTC stops. This has been done in anticipation of the DTC and PITC implementation in Kennedy Plaza.

47. The creation, construction and implementation of the Kennedy Plaza Project are conjunctively and collectively being pursued by the City, RIDOT and RIPTA.

48. In November of 2014, the Voters of the State of Rhode Island were asked to approve a Bond for the implementation of a transit system. Specifically, Question 6 posed to the voters by referendum in November of 2014 provides as follows:

Mass Transit HUB Infrastructure Bonds \$35,000,000 (Chapter 145 – Public Laws 2014)

Approval of this question will allow the State of Rhode Island to issue general obligation bonds, refunding bonds, and temporary notes in an amount not to exceed thirty-five million dollars (\$35,000,000) to fund enhancements and renovations to mass transit hub infrastructure throughout the State of Rhode Island to improve access to multiple intermodal sites, key transportation, healthcare, and other locations.

49. Upon information and belief, the approval of the Transit Bond, in the amount of \$35,000,000 was to be used to enhance and renovate Mass Transit Hub Infrastructure throughout Rhode Island, which was intended to improve access to multiple intermodal sites, key transportation, healthcare and other locations. The availability of the Transit Bond was also to provide leverage for possibly securing additional revenue for the Mass Transit Infrastructure Projects from Federal and private partners.

50. Upon information and belief, it is the goal of the City, RIDOT and RIPTA to utilize the Transit Bond for the purpose of the Improvement Project, construction of the PITC and the DTC, as well as to post the Transit Bond as leverage to obtain up to an

additional \$150,000,000 for the construction of the PITC as part of a proposed Public Private Partnership (hereinafter, “P3”).

51. Upon information and belief, the P3 is not a Mass Transit Infrastructure Project and is not eligible to be funded using the Transit Bond.

52. Neither the Improvement Project, the DTC or the PITC have been properly vetted by the public through public hearings, nor has the City, RIDOT and/or RIPTA obtained the necessary Federal, State and local approval.

53. The City has attempted to roll out the Improvement Project as the beginning phase for the ultimate development and construction of the PITC and the DTC. In doing so, the City, RIDOT and RIPTA are violating the procedural due process rights of those that abut the Kennedy Plaza Project by failing to provide adequate notice and a meaningful opportunity to be heard.

54. The 100 Westminster Street Property and 59 Westminster Street Property are located on Fulton Street and directly adjacent to the site of the Kennedy Plaza Project.

55. The 5 Exchange Street Property is located on Exchange Street and directly adjacent to the site of the Kennedy Plaza Project.

56. The 100 Westminster Street Property is a Class A Commercial Office Building with 20 stories.

57. The 59 Westminster Street Property is a commercial office building with 5 stories and is in the process of being converted into a luxury boutique hotel.

58. The 5 Exchange Street Property is the site of a Hilton Homewood Suites Hotel.

59. CCCC is a non-profit organization comprised of citizens with property interests within a two hundred (200) foot radius of the Kennedy Plaza Project.

60. CCCC is most concerned that the City, RIPTA and RIDOT will create a dedicated bus lane in front of 200 Exchange Street. In fact, the City has already removed the parking meters located along 200 Exchange Street in anticipation of the creation of a dedicated bus lane.

61. The Kennedy Plaza Project and specifically the re-routing of the bus routes, alteration of bus stops and alteration of traffic patterns on Fulton Street and Washington Street stands to cause property damage, property devaluation, inconvenience, annoyance and an interference with the Plaintiffs' quiet enjoyment of their Properties.

62. The Improvement Project's proposed raised, illuminated and centralized mid-block crossing across Fulton and Washington Street also stands to result in property devaluation, inconvenience, annoyance and an interference with the Plaintiffs' quiet enjoyment of their Properties.

63. The City, RIDOT and RIPTA have failed to conduct and perform the proper engineering studies, including the effects on lateral support, subjacent support and the effects that the total alteration of bus, vehicular and pedestrian traffic will have on the surrounding buildings and properties, including the Plaintiffs' Properties.

64. The City, RIDOT and RIPTA have failed to proceed through and obtain from the City's local departments the proper zoning and planning approvals necessary and required for the Kennedy Plaza Project.

65. The City, RIDOT and RIPTA are required to obtain all approvals and permits necessary for a Major Land Development project from the Planning Board for

this Project and failing to do such is a violation of State law and Plaintiffs' procedural and substantive due process rights.

66. There has been significant opposition to the City, RIDOT and RIPTA's proposal by residents and businesses in Downtown Providence. Most notably, residents of Waterplace Park Condominiums have presented the City a Petition including in excess of four hundred (400) signatures opposing the proposal and the process utilized by the City to implement the proposal, asserting that the same was not transparent.

COUNT I

(Declaratory Judgment that the City, RIDOT and RIPTA should be required to proceed through the permitting and approval process for a Major Land Development Project, pursuant to R.I. Gen. Laws § 45-23-25, et. Seq.)

67. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 66 of this Complaint as if fully set forth herein.

68. The Kennedy Plaza Project is a Major Land Development Project and accordingly the City, RIDOT and RIPTA are required to proceed through the permitting and approval process before the Planning Board for a Major Land Development Project, pursuant to R.I. Gen. Laws § 45-23-25, *et seq.*

69. The City, RIDOT and RIPTA are not currently involved in the permitting and approval process for the Kennedy Plaza Project with the Planning Board.

70. The City's website indicates that design and engineering for the Improvement Project will be completed in the in the fall of 2018; construction will go out to bid in the Winter of 2018 and 2019; and construction will begin in the Spring of 2019.

71. There is no indication on the City's website when describing the Improvement Project that the City will go through the requisite permitting and approval process for a Major Land Development Project. Moreover, the City fails to make

mention that the Improvement Project is the first phase step in incorporating the PITC and DTC.

72. The City, RIDOT and RIPTA are required to obtain all approvals and permits necessary for a Major Land Development project from the Planning Board for the Kennedy Plaza Project and failing to do such is a violation of State law and Plaintiffs' procedural and substantive due process rights.

73. The City, RIDOT and RIPTA have not afforded the abutters to the Kennedy Plaza Project, including the Plaintiffs, the opportunity to be heard with regard to said Project, as required under State law.

74. A balancing of the interests requires the City, RIDOT and RIPTA to proceed through the permitting and approval process for a Major Land Development Project, pursuant to R.I. Gen. Laws § 45-23-25, *et. seq.*

75. The City, RIDOT and RIPTA have failed to obtain and/or seek the approval of General Services Administration ("GSA"). GSA is charged with promulgating regulations governing the acquisition, use and disposal of property and personal property utilized by the Federal Government. Moreover, the Public Building Service ("PBS") manages federal properties, which houses federal customer agencies and the United States Courthouses on behalf of the American Taxpayer. Accordingly, any issues that affect federal properties and buildings must be reviewed and vetted by the PBS in conjunction with the GSA.

76. Upon information and belief, the City, RIDOT and RIPTA have failed to incorporate any consent or approval from the PBS and GSA with regards to the Kennedy Plaza Project, as well as the potential proposal for the implementation of the DTC and the

PITC. This consent and approval is necessary given that said Project would affect the United States Courthouses, which currently are home to the United States District Court for the District of Rhode Island and the United States Postal Service.

WHEREFORE, the Plaintiffs seek relief from this Honorable Court as follows:

- a. A Declaratory Judgment pursuant to and in accordance with R.I. Gen. Laws § 9-30-1, *et seq.* that Kennedy Plaza Project is a Major Land Development Project and accordingly the City, RIDOT and RIPTA are required to proceed through the permitting and approval process before the Planning Board for a Major Land Development Project, pursuant to R.I. Gen. Laws § 45-23-25, *et. seq.*;
- b. An award of Attorney's fees, costs and expenses incurred in prosecuting the instant action; and
- c. Any and all such other and further relief as this Court deems appropriate.

COUNT II

(Declaratory Judgment that the Defendants have failed to obtain the proper Permits and Engineering Reviews for the Kennedy Plaza Project)

77. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 76 of this Complaint as if fully set forth herein.

78. The City, RIDOT and RIPTA have a duty to exercise and use reasonable care with regard to the Kennedy Plaza Project and its effects on the neighboring properties, including the Plaintiffs' Properties, in order to avoid foreseeable harm and damages to said Properties and buildings.

79. The City, RIDOT and RIPTA, with reckless disregard, failed to conduct and perform proper engineering analysis and studies, with regard to the probable effects

that the Kennedy Plaza Project will have on the surrounding properties, including the Plaintiffs' Properties and buildings, considering a major re-routing of bus and vehicular traffic is occurring directly adjacent to the Plaintiffs' Properties.

80. The City, RIDOT and RIPTA have failed to obtain the proper permits required by State and local law for the Kennedy Plaza Project.

81. The City, RIDOT and RIPTA recklessly failed to exercise the care that an objectively reasonable party would use with regard to a project of this magnitude.

82. As a direct and proximate result of the actions and inactions of the City, RIDOT and RIPTA, the Plaintiffs' Properties have been and continue to be damaged, including property damage, property devaluation, inconvenience, annoyance and an interference with the Plaintiffs' quiet enjoyment and use of their Properties.

WHEREFORE, the Plaintiffs seek a judgment from this Honorable Court ordering as follows:

- a. A Declaratory Judgment pursuant to and in accordance with R.I. Gen. Laws § 9-30-1, *et seq.* that the Defendants have failed to obtain the proper Permits and Engineering Reviews for the Kennedy Plaza Project;
- b. Award the Plaintiffs compensatory damages against the City, RIDOT and RIPTA in an amount adequate to compensate the Plaintiffs for the damages to their Properties, as a result of the City, RIDOT and RIPTA's negligent acts and omissions as set forth *supra*, plus attorneys' fees, costs and expenses incurred in prosecuting the instant action;
- c. Assess punitive damages against the City, RIDOT and RIPTA for its reckless and grossly negligent acts and omissions, as set forth *supra*; and

- c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT III

(Declaratory Judgment as to the Legality of the Use of the Mass Transit Hub Infrastructure Bonds)

83. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 82 of this Complaint as if fully set forth herein.

84. The Improvement Project is being proposed in conjunction with RIDOT's and RIPTA's proposal for the implementation of a PITC. Specifically, in November of 2014, the Rhode Island voters approved the Transit Bond to enable RIDOT to create a transit hub. As part of the Improvement Project, it is the goal of the RIDOT, the City and RIPTA to implement the PITC at or near Kennedy Plaza.

85. Upon information and belief, the implementation of the Improvement Project is being carried forward for the purpose of providing a base upon which the P3 can be built. Accordingly, the City, RIDOT and RIPTA intend to utilize the Transit Bond approval granted in 2014 for the PITC as a means for funding the P3, along with the PITC.

86. In November of 2014, the voters of the State of Rhode Island were asked to approve a Bond for the implementation of a transit system. Specifically, Question 6 posed to the voters by referendum in November of 2014 provides as follows:

Mass Transit HUB Infrastructure Bonds \$35,000,000 (Chapter 145 – Public Laws 2014)

Approval of this question will allow the State of Rhode Island to issue general obligation bonds, refunding bonds, and temporary notes in an amount not to exceed thirty-five million dollars (\$35,000,000) to fund enhancements and renovations to mass transit hub infrastructure

throughout the State of Rhode Island to improve access to multiple intermodal sites, key transportation, healthcare, and other locations.

87. Specifically, the approval of the Mass Transit Hub Infrastructure Bonds, in the amount of \$35,000,000, was to be used to enhance and renovate Mass Transit Hub Infrastructure throughout Rhode Island, which was intended to improve access to multiple intermodal sites, key transportation, healthcare and other locations. The availability of these funds was for transit use only.

88. Upon information and belief, it is the goal of the City, RIDOT and RIPTA to utilize the Transit Bond for the purpose of the utilization of the Transit Bond as leverage to obtain \$150,000,000 for the P3, which is intended to incorporate non-transit uses.

89. Upon information and belief, the Transit Bonds cannot be used for a mixed-use development project, of which the majority of the use is not for transportation. Specifically, the use of the Transit Bond for the P3 is inconsistent with the purpose for which the bonds were approved by the Voters in 2014.

90. The utilization of the Transit Bond monies is inappropriate and adequate as those bond monies were specifically identified and approved by the voters in November of 2014 for transit only.

WHEREFORE, the Plaintiffs request that this Honorable Court declare the rights of the parties as they relate to the utilization of the Mass Transportation Bond funds for application to the Kenney Plaza Project, Improvement Project, PITC and the DTC.

COUNT IV
(Violation of Procedural Due Process Rights)

91. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 90 of this Complaint as if fully set forth herein.

92. Article I, Section 2 of the Rhode Island Constitution states as follows:

[a]ll free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.

93. The City, RIDOT and RIPTA have failed to proceed through and obtain from the City, RIDOT and RIPTA's local departments the proper zoning and planning approvals necessary and required for the Kennedy Plaza Project.

94. The City, RIDOT and RIPTA are required to obtain all approvals and permits necessary for a Major Land Development project from the Planning Board for the Kennedy Plaza Project and failing to do such and failing to provide Plaintiffs with an opportunity to be heard with regard to said Project is a violation of State law and Plaintiffs' procedural due process rights.

95. The City, RIDOT and RIPTA have not afforded the abutters to the Kennedy Plaza Project, including the Plaintiffs, with an opportunity to be heard with regard to said Project, as required under State law.

96. To date, the City, RIDOT and RIPTA have not had any hearings before the Planning Board with regard to the permitting and approvals required for the Kennedy Plaza Project.

97. The City, RIDOT and RIPTA have made no indication that they will go through the permitting and approval process for the Kennedy Plaza Project before the Planning Board. Moreover, the City has made no indication that it intends to obtain any approvals from the PITC and the DTC.

98. The Plaintiffs have been denied their opportunity to be heard with regard to the Kennedy Plaza Project and their Properties, which rights are afforded by way of the General Laws and the Rhode Island State Constitution.

WHEREFORE, the Plaintiffs seek a judgment from this Honorable Court ordering as follows:

- a. That the Defendants' actions amount to a violation of the Plaintiffs' Procedural Due Process rights;
- b. Award the Plaintiffs compensatory damages against the City, RIDOT and RIPTA in an amount provable at trial as a result of the City's, RIDOT's and RIPTA's acts and omissions as set forth *supra*, plus attorneys' fees, costs and expenses incurred in prosecuting the instant action; and
- c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT V
(Violation of Substantive Due Process Rights)

99. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 98 of this Complaint as if fully set forth herein.

100. Article I, Section 2 of the Rhode Island Constitution states as follows:

[a]ll free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought

to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.

101. The City, RIPTA and RIDOT have failed to proceed through the permitting process for the Kennedy Plaza Project and obtain from the City's local departments the proper zoning and planning approvals necessary and required for said Project.

102. The City, RIDOT and RIPTA are required to obtain all approvals and permits necessary for a Major Land Development project from the Planning Board for the Kennedy Plaza Project and failing to do such and failing to afford the Plaintiffs an opportunity to be heard with regard to said Project is a violation of State law and Plaintiffs' substantive due process rights.

103. The City has not afforded the abutters to the Kennedy Plaza Project, including the Plaintiffs, the opportunity to be heard with regard to said Project, as required under State law.

104. The City's, RIDOT's and RIPTA's actions are arbitrary, capricious and amount to bad faith.

105. The City's, RIDOT's and RIPTA's actions amount to a deprivation of Plaintiffs' property rights and an abuse of government power in violation of the Plaintiffs' substantive due process rights.

WHEREFORE, the Plaintiffs seek a judgment from this Honorable Court ordering as follows:

- a. That the Defendants' actions amount to a violation of the Plaintiffs' Substantive Due Process rights;

- b. Award the Plaintiffs compensatory damages against the City, RIDOT and RIPTA in an amount provable at trial as a result of the City, RIDOT and RIPTA's acts and omissions as set forth *supra*, plus attorneys' fees, costs and expenses incurred in prosecuting the instant action; and
- c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT VI

(Tortious Interference with Plaintiffs' use of their Properties)

106. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 105 of this Complaint as if fully set forth herein.

107. The acts and omission of the City, RIDOT and RIPTA constitute a grievous, tortious interference with Plaintiffs' use of their Properties that is actionable and in violation of Plaintiffs' rights under Rhode Island law.

108. The City, RIDOT and RIPTA with reckless disregard, failed to conduct and perform engineering analysis with regards to the effects of the Kennedy Plaza Project on the surrounding properties, including the Plaintiffs' Properties.

109. The City, RIDOT and RIPTA failed to exercise the care that an objectively reasonable party would use in conducting and implementing a project of this magnitude.

110. As a direct and proximate result of the actions and omissions of the City, RIDOT and RIPTA, the Plaintiffs' Properties have been and continue to be damaged, including property damage and property devaluation. The Project further stands to result in inconvenience, annoyance and an interference with the Plaintiffs' quiet enjoyment of their Properties.

WHEREFORE, the Plaintiffs seek judgment from this Honorable Court ordering as follows:

- a. Award the Plaintiffs compensatory damages against the City, RIDOT and RIPTA in an amount adequate to compensate the Plaintiffs for the damages to their Properties and the diminution of their values, as a result of the City, RIDOT and RIPTA's tortious interference with Plaintiffs' use of their Properties, as set forth *supra*, plus attorney's fees, costs and expenses incurred in prosecuting the instant action;
- b. Assess punitive damages against the City, RIDOT and RIPTA for its reckless tortious interference with Plaintiffs' use of their Properties, as set *supra*; and
- c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT VII
(Private Common Law Nuisance)

111. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 110 of this Complaint as if fully set forth herein.

112. The City, RIDOT and RIPTA have a duty to exercise and use reasonable care with regard to the Kennedy Plaza Project and its effects on the neighboring properties, including the Plaintiffs' Properties, in order to avoid foreseeable harm and damages to said Properties and buildings.

113. The City, RIDOT and RIPTA with reckless disregard, have failed to conduct and perform proper engineering analysis and studies, with regard to the probable effects that the Kennedy Plaza Project will have on the surrounding properties, including

the Plaintiffs' Properties and buildings, considering a major re-routing of bus and vehicular traffic is occurring directly adjacent to and in close proximity to the Plaintiffs' Properties.

114. The City, RIDOT and RIPTA recklessly failed to exercise the care that an objectively reasonable party would use with regard to a project of this magnitude.

115. The City, RIDOT and RIPTA have failed to obtain all necessary approvals as required by the Federal, State and local authorities. The City, RIDOT and RIPTA have circumvented the necessary approval process for the review of the Kennedy Plaza Project and in doing so have circumvented the Plaintiffs' right to a meaningful opportunity to be heard and ability to exercise their procedural due process rights.

116. The Kennedy Plaza Project will substantially interfere with the Plaintiffs' use and enjoyment of their Properties as the Properties will be damaged and their property values will diminish as a result of the actions and inactions of the City, RIDOT and RIPTA.

117. The implementation and construction of the Kennedy Plaza Project will cause an unacceptable and unsafe traffic circulation for buses, vehicles and pedestrians, such that it will create noise, dust, unknown pollution to the air and provide a negative impact on the health, safety and welfare of the surrounding area, including but not limited to Plaintiffs' quiet and peaceful enjoyment of their Properties.

118. As a result of the maintenance of the private common law nuisance, Plaintiffs have and will continue to incur damages, including the expenditures of substantial costs and fees in an effort to combat the negative impacts on the health, safety

and welfare of the surrounding area, including the Plaintiffs' Properties and their right to quiet and peaceful enjoyment of the same.

WHEREFORE, the Plaintiffs seek a judgment from this Honorable Court as follows:

- a. Award the Plaintiffs compensatory damages against the City, RIDOT and RIPTA in an amount adequate to compensate the Plaintiffs for property damage caused as result of the City, RIDOT and RIPTA's maintenance of a private nuisance, as set forth *supra*, plus attorney's fees, costs and expenses incurred in prosecuting the instant action;
- b. Preliminary and permanent injunctive relief ordering that the City, RIDOT and RIPTA be prevented from moving forward with the Project, and/or until such time that proper engineering studies, analysis and permitting are conducted and concluded which specifically address the effects that the Project will have on the surrounding properties, including the Plaintiffs' Properties; and
- c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT VIII
(Public Common Law Nuisance)

119. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 118 of this Complaint as if fully set forth herein.

120. The City, RIDOT and RIPTA have a duty to exercise and use reasonable care with regard to the Kennedy Plaza Project and its effects on the neighboring

properties, including the Plaintiffs' Properties, in order to avoid foreseeable harm and damages to said Properties and buildings.

121. The City, RIDOT and RIPTA with reckless disregard, have failed to conduct and perform proper engineering analysis and studies, with regard to the probable effects that the Kennedy Plaza Project will have on the surrounding properties, including the Plaintiffs' Properties and buildings, considering a major re-routing of bus and vehicular traffic is occurring directly adjacent to the Plaintiffs' Properties.

122. The City, RIDOT and RIPTA recklessly failed to exercise the care that an objectively reasonable party would use with regard to a project of this magnitude.

123. The City, RIDOT and RIPTA have failed to obtain all necessary approvals as required by the Federal, State and local authorities. The City, RIDOT and RIPTA have circumvented the necessary approval process for the review of the Kennedy Plaza Project and in doing so have circumvented the Plaintiffs' right to a meaningful opportunity to be heard and ability to exercise their procedural due process rights.

124. The Kennedy Plaza Project will substantially interfere with the Plaintiffs' use and enjoyment of their Properties as the Properties will be damaged and their property values will diminish as a result of the actions and inactions of the City, RIDOT and RIPTA.

125. As a result of the maintenance of the public common law nuisance, Plaintiffs have and will continue to incur damages, including the expenditures of substantial costs and fees in an effort to combat the negative impacts on the health, safety and welfare of the surrounding area, including the Plaintiffs' Properties and their right to quiet and peaceful enjoyment of the same.

WHEREFORE, the Plaintiffs seek a judgment from this Honorable Court as follows:

- a. Award the Plaintiffs compensatory damages against the City, RIDOT and RIPTA in an amount adequate to compensate the Plaintiffs for property damage caused as result of the City, RIDOT and RIPTA's maintenance of a public nuisance, as set forth *supra*, plus attorney's fees, costs and expenses incurred in prosecuting the instant action;
- b. Preliminary and permanent injunctive relief ordering that the City, RIDOT and RIPTA be prevented from moving forward with the Kennedy Plaza Project, and/or until such time that proper engineering studies, analysis and permitting are conducted and concluded which specifically address the effects that said Project will have on the surrounding properties, including the Plaintiffs' Properties; and
- c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT IX
(Private Nuisance, R.I. Gen. Laws § 10-1-1 et seq.)

126. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 125 of this Complaint as if fully set forth herein.

127. The implementation and construction of the Kennedy Plaza Project will cause an unacceptable and unsafe traffic circulation for buses, vehicles and pedestrians, such that it will create noise, dust, unknown pollution to the air and provide a negative impact on the health, safety and welfare of the surrounding area, including but not limited to Plaintiffs' quiet and peaceful enjoyment of their Properties.

128. As a result of the maintenance of the private nuisance, Plaintiffs have and will continue to incur damages, including the expenditures of substantial costs and fees in an effort to combat the negative impacts on the health, safety and welfare of the surrounding area, including the Plaintiffs' Properties and its right to quiet and peaceful enjoyment of the same.

WHEREFORE, the Plaintiffs seek a judgment from this Honorable Court as follows:

- a. Award the Plaintiffs compensatory damages against the City, RIDOT and RIPTA in an amount adequate to compensate the Plaintiffs for property damage caused as result of the City's, RIDOT's and RIPTA's maintenance of a private nuisance, as set forth *supra*, plus attorney's fees, costs and expenses incurred in prosecuting the instant action;
- b. Preliminary and permanent injunctive relief ordering that the City, RIDOT and RIPTA be prevented from moving forward with the Kennedy Plaza Project, and/or until such time that proper engineering studies, analysis and permitting are conducted and concluded which specifically address the effects that said Project will have on the surrounding properties, including the Plaintiffs' Properties; and
- c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT X
(Public Nuisance, R.I. Gen. Laws § 10-1-1 et seq.)

129. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 128 of this Complaint as if fully set forth herein.

130. The implementation and construction of the Kennedy Plaza Project will cause an unacceptable and unsafe traffic circulation for buses, vehicles and pedestrians, such that it will create noise, dust, unknown pollution to the air and provide a negative impact on the health, safety and welfare of the surrounding area, including but not limited to Plaintiffs' quiet and peaceful enjoyment of their Properties.

131. As a result of the maintenance of the public nuisance, Plaintiffs have and will continue to incur damages, including the expenditures of substantial costs and fees in an effort to combat the negative impacts on the health, safety and welfare of the surrounding area, including the Plaintiffs' Properties and their right to quiet and peaceful enjoyment of the same.

WHEREFORE, the Plaintiffs seek a judgment from this Honorable Court as follows:

- a. Award the Plaintiffs compensatory damages against the City, RIDOT and RIPTA in an amount adequate to compensate the Plaintiffs for property damage caused as result of the City's, RIDOT's and RIPTA's maintenance of a public nuisance, as set forth *supra*, plus attorney's fees, costs and expenses incurred in prosecuting the instant action;
- b. Preliminary and permanent injunctive relief ordering that the City, RIDOT and RIPTA be prevented from moving forward with the Kennedy Plaza Project, and/or until such time that proper engineering studies, analysis and permitting are conducted and concluded which specifically address the effects that said Project will have on the surrounding properties, including the Plaintiffs' Properties; and

- c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT XI
(Temporary and Permanent Injunctive Relief)

132. The Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 131 of this Complaint as if fully set forth herein.

133. The Kennedy Plaza Project has caused and will cause damage to the Plaintiffs' Properties.

134. The Plaintiffs have a likelihood of success on the merits in this matter.

135. The Plaintiffs stand to suffer irreparable harm should the Kennedy Plaza Project be implemented by the City, RIDOT and RIPTA and a balancing of the equities weighs in favor of issuing injunctive relief.

136. The City, RIDOT and RIPTA have failed to conduct proper engineering studies and analysis which specifically address the effects that the Kennedy Plaza Project will have on the surrounding properties, including the Plaintiffs' Properties.

137. The City, RIDOT and RIPTA have failed to proceed through and obtain from the City's local departments the proper zoning and planning approvals necessary and required for this Project.

WHEREFORE, the Plaintiffs seek equitable relief from this Honorable Court as follows:

- a. Preliminary and Permanent injunctive relief ordering that the City, RIDOT and RIPTA be prevented from moving forward with the Kennedy Plaza Project until such time that the City, RIDOT and RIPTA obtains all zoning

and planning approvals necessary for this Project from the appropriate City and State departments;

- b. Preliminary and permanent injunctive relief ordering that the City, RIDOT and RIPTA be prevented from moving forward with the Kennedy Plaza Project, and/or until such time that proper engineering studies and analysis are conducted and concluded which specifically address the effects that said Project will have on the surrounding properties, including the Plaintiffs' Properties;
- c. An award of Attorney's fees, costs and expenses incurred in prosecuting the instant action; and
- d. Any and all such other and further equitable relief as this Court deems appropriate.

Respectfully submitted,

**CONCERNED CITIZENS OF CAPITAL
CENTER, LLC, 100 WESTMINSTER
PARTNERS, LLC, 30 KENNEDY
PARTNERS, LLC, and EXCHANGE
STREET HOTEL, LLC**

By and through their attorney,

/s/ John O. Mancini

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